

ORIGINAL

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

TYRONE P. JAMES,

Plaintiff

v.

YORK CITY POLICE  
DEPARTMENT, AGENT  
JAMES H. MORGAN, DET.  
RICHARD PEDDICORD, DET.  
RAYMOND E. CRAWL, SGT.  
GENE FELS, DET. KESSLER, DET.  
GLOWCZESKI, AGENT BRIAN  
WESTMORELAND, AGENT RANDY SIPES,  
C/O BAYLARK,

Defendants

CIVIL ACTION NO. 1:01-1015

(KATE, D.J.)  
(MANSTON, M.J.)FILED  
HARRISBURG, PA

MAR 21 2005

MARY E. D'ANDREA, CLERK  
Per K.M.  
Deputy ClerkMOTION FOR LEAVE TO FILE AN AMEND COMPLAINT

Plaintiff's, Tyrone P. James, pursuant to Federal Rule Of Civil Procedure, Rules 15(a)(b) and (c), requests leave to file an Amended Complaint, "Relate back," to the filing of the original Complaint to substitutes party name "misnomer," and adding a party.

1. The Plaintiff's original Complaint, filed June 9, 2001; named York County Police Department has Defendant.

2. Since the filing of the Complaint, Plaintiff has determined that the name of York County Police Department, Defendant, should be amended to reflect the identity has "York City Police Department." Defendant was improperly named in the original Complaint and perhaps served a summons with this "wrong" name.

3. Plaintiff's wish to add the following Defendant, City Of York, has a Defendant. Defendant a Municipality, responsible for the hiring and training of officers, have the power to correct any constitutional violation and the Duty To Act.

4. Federal Rule Civil Procedure, Rule 15(c), which states, that, "An Amended Complaint changing parties "Relating back" to the time of filing of the original Complaint, if the two complaint deal with the same subject matter,

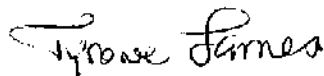
if the new defendant received adequate notice of the action within the time limit for service of process, (i.e. 120 days after filing). Schiavone v. Fortune, 477 U.S. 21, 29, 106 S.Ct. 2379 (1989). Defendant knew or should have know that they were the intended defendants.

The Rule also provides that the claim relate back, if the relevant statutes of limitation would permit it to relate back. Since the § 1983 actions use state statutes of limitations, state "Relation back" Law can be applied. See Maritt County of Los Angeles, 875 F.2d 765, 768 (9th Cir. 1989)(relation back does not require timely notice to the new defendant under California law); Wilson v. City of Atlantic City, 142 F.R.D. 603, 605 (D.N.J. 1992).

5. The Court should grant leave freely to Amend Complaint. Poman v. Davis, 371 U.S. 178, 182 (1962). Rule 15(c) is sufficient to permit correction. Washington v T.C. & Y Stores, Co., 324 F.Supp 849, 856 (W.D. Ca. 1971); and Marinari v. Dunleavy, 86 F.R.D. 127, 130-131 (E.D.Pa. 1980).

Dated: March 11, 2005.

Respectfully submitted,



Tyrone P. James

EX 9451  
P.O. Box A  
Bellefonte, PA 16823-0820

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(KANE, D.J.)

(MANNION, M.J.)

CERTIFICATE OF SERVICE

I, Tyrone P. James, Plaintiff's, pro se, hereby certified that, I am this day serving a true and correct copy to assigned counsel's "Motion For Leave To File An Amended Complaint," in manner set forth below to the following, by placing said Legal mail into a legal envelop, by deposited into the institutional mail box, and turning over said documents to prison officials for mailings, on March 11, 2005.

I certify under penalty of perjury that the foregoing is true and correct; pursuant to 28 U.S.C. § 1746.

BY FIRST CLASS U.S. MAIL:

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*Tyrone P. James*  
Tyrone P. James  
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